

Assembly Bill No. 2195

Passed the Assembly May 13, 2010

Chief Clerk of the Assembly

Passed the Senate August 5, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 524 to the Evidence Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2195, Silva. Taxation: State Board of Equalization:penalty: burden of proof.

Existing law imposes various taxes and fees that are administered and collected by the State Board of Equalization. Existing law provides that the taxpayer has the burden of proof in court proceedings for a refund of tax, while the state agency has the burden of proof with respect to its assertion of fraud or intent to evade penalties.

This bill would provide, for purposes of the taxes and fees administered by the State Board of Equalization, that the board shall have the burden of proof, by clear and convincing evidence, in sustaining its assertion of penalties for intent to evade or fraud in a civil proceeding.

This bill would also provide that its provisions shall not subject a taxpayer to unreasonable search or access to records in violation of the law, as provided.

The people of the State of California do enact as follows:

SECTION 1. Section 524 is added to the Evidence Code, to read:

524. (a) Notwithstanding any other provision of law, in a civil proceeding to which the State Board of Equalization is a party, that board shall have the burden of proof by clear and convincing evidence in sustaining its assertion of a penalty for intent to evade or fraud against a taxpayer, with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(b) Nothing in this section shall be construed to override any requirement for a taxpayer to substantiate any item on a return or claim filed with the State Board of Equalization.

(c) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

(d) For purposes of this section, “taxpayer” includes a person on whom fees administered by the State Board of Equalization are imposed.

Approved _____, 2010

Governor